

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA-48099-M.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to make a class I reinstatement of a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Payments: Generally--Words and Phrases

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment within the meaning of 43 CFR 3108.2-1(c). A tender of rental payment is made only when a lessee submits payment to the BLM office administering his lease, providing BLM with the opportunity either to receive or decline payment. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for a class I reinstatement of an oil and gas lease.

3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Reinstatement of a terminated noncompetitive oil and gas lease under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e)

(1982), requires payment by the lessee of rental at the rate of \$5 per acre as well as reimbursement of administrative costs (up to \$500) and the cost of publishing notice in the Federal Register.

APPEARANCES: Oscar D. Graham, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Oscar D. Graham appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated December 24, 1984, denying his petition for reinstatement of oil and gas lease AA-48099-M. The original lease (AA-48099) covering 3,200 acres was issued to the Anchorage Research and Management Company (ARMC), effective September 1, 1982. On September 15, 1982, ARMC assigned 40 acres of the lease to appellant. A correctly completed assignment was transmitted to BLM on May 10, 1983 and BLM approved the partial assignment effective June 1, 1983. The notice of partial assignment approval, dated June 30, 1983, stated that rental was due annually on or before the lease anniversary date (September 1) as stated in the notice and that Oscar D. Graham was responsible for payment of the annual rental on the assigned lands. While payment was timely made prior to September 1, 1983, no payment was made prior to the September 1, 1984, anniversary date and the lease thereupon terminated by operation of law. 43 U.S.C. § 188(b) (1982).

On October 23, 1984, BLM forwarded appellant an oil and gas lease termination notice indicating that in accordance with 43 CFR 3108.2-1(a) appellant's Federal oil and gas lease terminated for failure to pay the annual rental on or before the anniversary date of the lease. BLM also informed appellant of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. § 188(d) (1982) (class II reinstatement). BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II.

On December 3, 1984, appellant filed a class I petition for reinstatement of his oil and gas lease, contending that he mailed the rental payment within 20 days of the lease anniversary date, September 1, 1984. He contended the check was mailed on September 14, 1984, and tendered and cashed by BLM on September 20, 1984. He further stated he was party to two 40-acre leases, one in Alaska and another in New Mexico. He asserted the change in notification procedures, that is, the requirement he send his payment to the Minerals Management Services, Bonus and Rental Accounting and Support System in Denver, Colorado, caused him some confusion and contributed to his late payment, since the notice was misfiled in the records of his New Mexico lease.

BLM's December 24, 1984, decision denying his petition for a class I reinstatement followed. In the decision, BLM, citing Louis Samuel, 8 IBLA 268 (1972), found that an applicant for a class I reinstatement must show the failure to timely pay the rental was either justifiable or not due to a lack of reasonable diligence. BLM determined appellant's petition for reinstatement did not show reasonable diligence in mailing the payment or a justifiable reason for delay in payment.

BLM determined the rental payment, which had been received on September 21, 1984, was not paid or tendered within 20 days of the anniversary date of the lease, which is the first requirement of a class I reinstatement. BLM also found that appellant's failure to pay the annual rental was inadvertent and determined that appellant's lease was subject to reinstatement pursuant to the provisions of 30 U.S.C. § 188(d) (1982).

In his statement of reasons on appeal, appellant contends the rental payment forwarded to BLM was "tendered, mailed, and postmarked" on September 15, 1984, and as a result should be accepted as timely. ^{1/} Appellant asserts that he had no notice of the requirement for making payment within 20 days of the anniversary date of the lease; otherwise, he argues, he would have expedited the delivery of the payment. Appellant also argues that the company which aided him in obtaining his lease filed for bankruptcy, and, as a result, failed to notify him of the impending anniversary date of the lease. Finally, appellant objects to the additional costs of applying for reinstatement under the provisions of 30 U.S.C. § 188(d) (1982) (class II reinstatement) as unreasonable.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon the failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). Since appellant's rental payment was not received on or before the anniversary date, oil and gas lease AA-048099-M terminated automatically.

Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of termination upon a showing by the lessee that the failure to pay on or before the lease anniversary date was either justifiable or not due to a lack of reasonable diligence. Hugh Carter Crutchfield Trust, 87 IBLA 27 (1985); Harriet C. Shaftel, 79 IBLA 228, 230 (1984); Vernon I. Berg, 72 IBLA 211 (1983).

Mailing the rental payment after the due date does not constitute reasonable diligence. O. L. Foster, 72 IBLA 367 (1983). However, failure to pay on time may be considered justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. Joanne F. Bechtel, 76 IBLA 1 (1983), and cases cited therein. Negligence, forgetfulness, and inadvertence do not justify failure to pay rental timely, since they are events within the lessee's control. Eleanor L. M. Dubey, 76 IBLA 177 (1983).

[2] There is no merit to appellant's principal argument that because his payment was mailed and postmarked on the 15th day from the anniversary date of the lease, it was "tendered" within 20 days thereof as required by

^{1/} The envelope containing the rental payment was postmarked on September 18, 1984, in San Antonio, Texas, not on September 15, 1984, as alleged.

43 CFR 3108.2-1(c). This Department has long held that placing a check for rental in the mail does not constitute tender of a lease rental. Until the proper BLM office has had the opportunity to receive or decline the rental check, no tender has occurred. See Mobil Oil Corp., 35 IBLA 265 (1978).

In Mobil Oil Corp., *supra* at 268, we cited Kerr v. United States, 108 F.2d 585, 586 (D.C. Cir. 1939), wherein the court said:

The word "tender" is usually held to mean that the thing offered must be actually produced and placed in such position that control over it is relinquished by the tenderer so that the teree may reach out and lay hold on it. Richey v. Stanley, Tex. Civ. Appl. 38 S.W.2d 1104; Linch v. Nebraska B. A. Co., 120 Neb. 819, 235 N.W. 456; Kreiss Potassium Phosphate Co. v. Knight, 98 Fla. 1004, 124 So. 751. It also must be made at the place agreed upon. Holmes v. Holmes, 12 Barb., N.W. 137. Neither of these conditions, in our opinion is satisfied by the mailing of a money order, unless the payee has consented to make the post office his agent to receive payment. The act of mailing does not amount either to a tender or to a payment until the actual receipt of the letter by the addressee. The rule in such cases is that the postal authorities are the agents of the sender. In this case they were agents of the insured to transmit the premiums to the Bureau office in Washington. Until the money order reached the Bureau, it was not the money of the insurer but the money of the insured, and until that event the insured was not entitled to the reinstatement of his policy.

Clearly, appellant did not tender payment within 20 days after the due date.

Appellant suggests his failure to make rental payment in a timely manner was due to BLM's failure to notify him of the date payment was due. However, appellant fails to recognize that it is the lessee's responsibility to know when rentals are due and to effect required payment with or without benefit of notice from BLM. Instruction No. 5 on the lease assignment form 3106-5 states that approval of assignment of a portion of the leased lands creates separate leases but does not change the terms and conditions of the lease or the anniversary date for purposes of payment of annual rental. Reliance upon receiving a billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental in a timely manner. Richard C. Hubbard, 68 IBLA 170 (1982). BLM properly denied appellant's petition to reinstate the lease under class I because appellant failed to prove his untimely rental payment was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2(b).

[3] Although reinstatement of the lease at its original rental rate under 30 U.S.C. § 188(c) is not possible, BLM properly considered the applicability of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447 (enacted Jan. 12, 1983), which authorizes reinstatement of leases where payment of the rental is not made within 20 days of the anniversary date, provided certain conditions are satisfied. Section 401 of the Act

amends section 31 of the Mineral Leasing Act by adding provisions codified at 30 U.S.C. § 188(d), (e) (1982). With respect to leases terminated after January 12, 1983, the statute authorizes reinstatement where

a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

30 U.S.C. § 188(d)(2)(B) (1982).

The statute further provides that reinstatement under 30 U.S.C. § 188(d) (1982) shall be made only if certain conditions are met including payment of back rentals and the inclusion in a reinstated noncompetitive lease of a requirement for back and future rentals at a rate of not less than \$ 5 per acre per year. 30 U.S.C. § 188(e); see Kurt W. Mikat, 82 IBLA 71 (1984). The statute further requires that the lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed \$ 500, and for the cost of publication in the Federal Register of notice of the proposed reinstatement. BLM correctly stated these terms in the December 24, 1984, decision which denied appellant's petition for class I reinstatement and established the conditions under which a class II reinstatement was possible.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

